

D.T.E. 01-54

Investigation by the Department of Telecommunications and Energy on its own Motion into
Competitive Market Initiatives.

ORDER OPENING INVESTIGATION INTO COMPETITIVE MARKET INITIATIVES

I. INTRODUCTION

Significant progress in restructuring our century-old electric regulatory system has been made since retail electric competition was introduced in Massachusetts in March of 1998. However, as we approach the half-way mark of the seven year transition period established by the 1997 Electric Restructuring Act, retail competition has not advanced as quickly as some anticipated. Competitive retail suppliers currently serve less than one percent of consumers served by Massachusetts electric distribution companies, representing only five percent of electric load.

The Massachusetts Department of Telecommunications and Energy (“Department”) is committed to taking all appropriate steps to bring the benefits of industry restructuring to electricity consumers. As a first step, the Department held a one-day conference on May 31, 2001, to discuss actions the Department could take to expand the range of competitive options available to consumers, particularly the increasing number of consumers that receive default service, at market-based prices, from their distribution companies.¹ In addition to the oral comments given at the May 31st conference, participants were invited to submit written comments.² As the next step, with this Order, the Department begins a formal investigation

¹ Default service customers currently represent approximately 25 percent of electricity customers, and 22 percent of the electric load served by Massachusetts distribution companies.

² Comments were received by: American PowerNet, Cape Light Compact, ChooseEnergy, Inc., Commonwealth of Massachusetts Division of Energy Resources, Commonwealth of Massachusetts Office of the Attorney General, Competitive Suppliers (AES New Energy, Inc., AllEnergy Gas and Electric Marketing Company, L.L.C., Enron Energy Services, Exelon Energy Company, Green Mountain Energy Company, the
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into competitive market initiatives with the intent to minimize or eliminate any barriers to competitive choice.

In general, the comments concerned steps the Department could take to: (1) improve competitive supplier access to information regarding default service customers; (2) otherwise expand the range of competitive options available to default service customers; and (3) generally improve the retail choice environment in the Commonwealth. The comments were extremely useful in eliciting a number of proposals and recommendations designed to expand the competitive options available to customers and assist development of an efficient competitive market.

Several commenters identified steps that the Department could take in the near-term to increase the access of competitive suppliers to information about default service customers. In addition, each of the distribution companies has informed the Department of the steps they are currently taking, or propose to take in the near-term, to improve communication channels between default service customers and competitive suppliers. See Section II, below. In Section III, below the Department directs all distribution companies to implement certain of these

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National Energy Marketers Association, and SmartEnergy, Inc.), Dominion Retail, Inc., Enermetrix, Fitchburg Gas and Electric Light Company, Massachusetts Community Action Directors Association and Low-Income Energy Affordable Network, Massachusetts Electric Company and Nantucket Electric Company, Massachusetts Municipal Association, Mirant New England, Inc., National Association of Industrial and Office Properties (Massachusetts Chapter), New Power Company, NSTAR Electric, PG&E National Energy Group, Select Energy, Inc., Sithe New England Holdings, SmartEnergy, Inc., TransCanada, Utility Workers Union of America, Western Massachusetts Electric Company, and XENERGY.

initiatives immediately, in order to promote the marketing and enrollment activities of competitive suppliers during the summer months. Other proposals and recommendations raised by the commenters require additional investigation in order to fully evaluate the issues for possible implementation. In order to proceed in an efficient and expeditious manner, the Department's will investigate these issues in phases. Issues to be investigated in phase one are discussed in Section IV, below. Other issues to be investigated in separate phases are discussed in Section V, below.

II. DISTRIBUTION COMPANIES' ACTIVITIES/PROPOSALS

Each of the Massachusetts electric distribution companies has informed the Department of the competitive initiatives they are currently undertaking and/or have presented proposals for additional initiatives that they would like to implement immediately. Massachusetts Electric Company and Nantucket Electric Company (jointly, "MECo") has submitted a proposal for Department approval that has two components. First, MECo proposes to make lists of non-residential default service customers, by rate class, available to suppliers. Second, MECo proposes to identify a small group of suppliers who are "ready, willing, and able" to make offers to customers. MECo proposes to make default service customers aware of these suppliers using its normal channels of communications.

Boston Edison Company, Cambridge Electric and Commonwealth Electric (jointly, "NSTAR") propose to provide competitive suppliers with a data file containing historic hourly load data for its largest 200 default service customers (representing approximately 300 megawatts). The identity of these customers would be masked with an identification number.

Customers with late payment charges would not be included in the program. According to NSTAR's proposal, an interested supplier could respond in two ways: (1) provide NSTAR with a list of customers (i.e., identification numbers) that the supplier would like to contact; or (2) provide NSTAR with indicative offers for customers including, proposed rate structures, terms and conditions, and estimated savings. NSTAR would inform identified customers of suppliers' interest, by providing them with a supplier contact name and phone number and would subsequently follow up with each customer.

Western Massachusetts Electric Company ("WMECo") has taken two steps to assist competitive suppliers in identifying default service customers. First, it has scheduled a forum to take place this fall where its customer representatives will bring together large default service customers and suppliers, in order to better inform these customers about their competitive options. Second, WMECo has facilitated a "blind" mailing to default service customers for one supplier and is willing to offer this service to others. A blind mailing uses an independent mailhouse to distribute supplier information to customer classes identified by the supplier -- the supplier does not receive a list of customers to whom the mailing is sent. The supplier informs the distribution company to which customer classes it would like the mailing sent and provides the marketing materials to be sent to these customers. The distribution company forwards the appropriate mailing list and the marketing materials to the mailhouse.

Fitchburg Gas and Electric Light Company ("Fitchburg") recommends the Internet-based auction supported by Enermetrix (in which USOURCE, a Unitil subsidiary, participates) as a useful tool that could be used to assist the switching of default service

customers to competitive suppliers. Fitchburg proposes that, in the near-term, as an interim solution, distribution companies are logical candidates to provide their customers access to the Enermetrix auction, because of the existing relationships between the companies' account managers and their customers. Fitchburg seeks a waiver from the Department's previous ruling in Fitchburg Gas and Electric Light Company, D.T.E. 97-115/98-120, that would permit its affiliate USOURCE to provide brokerage services within Fitchburg and the surrounding communities.

III. INITIATIVES TO BE IMPLEMENTED IMMEDIATELY BY DISTRIBUTION COMPANIES

It is appropriate that we take some steps to expand the competitive options available to default service customers during the summer months. In doing so, the Department must ensure that customers are fully informed regarding which licensed competitive suppliers³ are interested in providing them with competitive generation service; similarly, competitive suppliers must be afforded effective means to market their services to consumers.

Many commenters stressed that a primary obstacle they face in providing service to Massachusetts electric consumers is their lack of access to information about customers, particularly default service customers. It is clear that access to the names, addresses, and rate classes of default service customers would greatly improve the ability of suppliers to offer their services to default service customers. While distribution companies and suppliers must handle this information in a sensitive manner, the address and class of service are not proprietary. For

³ In this Order, the Department uses the terms "competitive supplier" and "supplier" to refer to both licensed competitive suppliers and electricity brokers.

example, this type of customer information is widely available to telephone local exchange carriers in the Commonwealth.

Therefore, the Department directs each distribution company to provide, upon the request of a licensed competitive supplier, the names, addresses, and rate classes of its default service customers. In order to receive this information, a supplier must execute an agreement with the distribution company requiring the supplier not to use this information for any purpose other than to market electricity-related services.

The Department also directs each distribution company to establish a list of “Active Competitive Suppliers” in its service territory and to provide the Department with this list within fourteen days. To qualify for inclusion on a distribution company’s “Active Competitive Suppliers” list, a supplier must: (1) be licensed by the Department, (2) have completed electronic data transfer testing with the distribution company, and (3) have executed an agreement stating that it is willing and able to serve customers at the present time.

The Active Competitive Suppliers should play an important role as distribution companies continue to educate consumers about the availability of competitive options, in that the companies have a level of assurance that the suppliers included on the lists will respond to inquiries from customers. Therefore, similar to MECo’s proposal, the Department authorizes and encourages each distribution company to promote the suppliers on its active list using its normal channels of communication with its default service customers (e.g., customer representatives, bill inserts and messages, websites). The Department intends to revise its own website to include a list of active suppliers for each service territory. We also encourage the

distribution companies to hold customer forums, similar to the one proposed by WMECo, to bring default service customers and suppliers together.

In addition to customers' names and addresses, a number of commenters sought access to additional information, including access to customers' historic load data and credit information. The Department is committed to moving in an expeditious manner to bring the benefits of a competitive market to Massachusetts consumers. However, issues associated with the release of historic load and credit information are more complex and require additional investigation in the near-term before they can be implemented. As such, they will be addressed in the first phase of this proceeding.

IV. ISSUES TO BE ADDRESSED IN PHASE I

The Department's objective for the first phase of this proceeding is to establish a comprehensive set of initiatives that will ensure that competitive suppliers have appropriate access to information regarding default service customers. In Section III, above, the Department has directed each distribution company to immediately make available default service customers' names, addresses, and rate classes to suppliers and brokers. Phase I will address, among other issues, the manner in which customer's historic load data and credit information can or should be made accessible to competitive suppliers. Timely resolution of this issue may improve the ability of suppliers to identify and market to default service customers.

Unlike customers' names and addresses, historic load data and credit information may be considered proprietary information to companies operating in certain industries. Therefore,

the Department proposes that each distribution company be required, upon request of a competitive supplier, to provide historic load information and credit information for those default service customers that have affirmatively authorized the distribution company to do so. The Department is seeking additional comment before finalizing this proposal and any other issues dealing with access to customer information. Interested parties will have an opportunity to discuss these issues at a technical session to be held at the Department's offices at 11:00 a.m. on July 24, 2001. Any party wishing to participate in this technical session must notify the Department in writing of its intent to participate no later than the close of business on July 19, 2001.

V. ISSUES TO BE ADDRESSED IN SEPARATE PHASES

A. Introduction

In addition to the issues discussed above, commenters provided recommendations and proposals: (1) regarding other steps the Department could take to expand the range of competitive options available to default service customers, and (2) concerning general improvements to the Department's retail choice policies that would apply to all customers. Below, we identify those issues we intend to investigate in separate phases of this proceeding.⁴ As further issues develop, the Department will consider changing the scope of this investigation. A procedural schedule for these phases will be established at a later date.

⁴ Several commenters raised issues associated with the installation of advanced metering equipment and the provision of billing services by distribution companies. These issues are important to the development of a competitive market, and are currently being considered in a separate, ongoing investigation: Competitive Metering and Billing, D.T.E. 01-28.

B. Other Default Service Issues

Issue 1: The first issue involves the participation of distribution companies in Internet-based auction processes to assist the movement of default service customers to suppliers, as proposed by Fitchburg. See Section II, above. Under this approach, a distribution company would perform the role of electricity broker for those default service customers that choose to participate, in that the distribution company would aggregate its default service customers, or some sub-set of customers, and auction the aggregated load, including pricing and other terms and conditions, on the Internet. Suppliers participating in the auction would view the specified aggregated load and determine whether to respond with a bid. The distribution company would select the most advantageous bid and switch participating default service customers to that supplier.

Issue 2: The second issue involves the manner in which municipal aggregators, as defined in G.L. c. 164, § 234, may aggregate default service customers within their municipal boundaries. As the number of default service customers grows, municipal aggregators may have a natural role to play in providing service to these customers. However, G.L. c. 164, § 234 requires that a municipal aggregator offer generation service to all consumers within its municipal boundary at prices that do not exceed standard offer service prices. Because of this requirement, no such aggregator has been successful in switching customers to a competitive supplier.

Issue 3 : The third issue involves providing distribution companies with the authority to obtain customer authorization to switch default service customers to competitive suppliers.

Under this approach, if a distribution company receives a telephone inquiry from a default service customer regarding default service prices, the company would have the authority, with the customer's permission, to facilitate the switching of the customer from default service to a competitive supplier.⁵ This approach could be expanded to include a postcard in a default service customer's electric bill, whereby the customer is informed that, by returning the postcard, they would authorize their distribution company to switch them from default service to a competitive supplier. As with Issue 1, above, this approach has distribution companies performing the role of electricity broker for their default service customers.

Issue 4: The fourth issue involves internet-based customer authorizations or "electronic signatures." General Laws, c. 164, § 1F requires customer authorization for switching must be in written form or via telephone with a third-party verification. This requirement, established as a consumer protection against "slamming," may be a barrier to the growing number of competitive suppliers that seek to do business through the Internet.

VI. OTHER ISSUES

Commenters raised several other issues that, due to concerns of administrative efficiency, are not best handled in the context of the present proceeding. For example, in Pricing and Procurement of Default Service, D.T.E. 99-60-C, the Department established

⁵ A similar approach is currently is being implemented in the Consolidated Edison service territory in New York.

guidelines for the procurement and solicitation of default service. The Department stated our intention to revisit these issues as more experience was gained. The Department may revisit our guidelines, if appropriate, in light of the experience of the past twelve months and ongoing concerns about the appropriate allocation of costs that are attributable to the provision of default service.

In addition, several commenters raised concerns about the establishment of rules for interconnection standards and back-up distribution rates for the installation of distributed generation. Distributed generation has the potential to be a viable competitive alternative to customers in the restructured industry. It also could be a key contributor to establishing essential load response capabilities. The lack of uniformity and uncertainty regarding interconnection standards and back-up rates could be inhibiting the installation of distributed generation in Massachusetts. The Department will investigate these issues in a separate proceeding.

VII. CONCLUSION

The Department is committed to identifying and minimizing or eliminating all barriers to the development of an efficient competitive market in Massachusetts. We look forward to sharing the energy, capability and knowledge of all market players to ensure that the benefits of competition accrue to Massachusetts consumers.

VII. ORDER

Accordingly, the Department hereby

VOTES: To open an investigation into competitive market initiatives; and it is

ORDERED: That within seven days of the date of this Order, the Secretary of the Department shall publish notice of this investigation in all statewide and regional newspapers of daily circulation within the Commonwealth; and it is

FURTHER ORDERED: That all electric distribution companies comply with the directives regarding access to customer information contained herein.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr. Commissioner

Deirdre K. Manning, Commissioner